

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |                       |
|--|---|-----------------------|
| In the Matter of                                 | ) | GN Docket No. 09-47   |
| International Comparison and Consumer            | ) |                       |
| Survey Requirements in the Broadband             | ) |                       |
| Data Improvement Act                             | ) |                       |
|  |   |                       |
| A National Broadband Plan for Our Future         | ) | GN Docket No. 09-51   |
|  |   |                       |
| Inquiry Concerning the Deployment of Advanced    | ) | GN Docket No. 09-137  |
| Telecommunications Capability to All Americans   | ) |                       |
| in a Reasonable and Timely Fashion, and Possible | ) |                       |
| Steps to Accelerate Such Deployment Pursuant to  | ) |                       |
| Section 706 of the Telecommunications Act of     | ) |                       |
| 1996, as Amended by the Broadband Data           | ) |                       |
| Improvement Act                                  | ) |                       |
|  |   |                       |
| NBP Public Notice #25                            | ) |                       |
| Transition from Circuit-Switched Network to      | ) | NBP Public Notice #25 |
| All-IP Network                                   | ) |                       |

**COMMENTS OF  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC) hereby submits these Comments in response to the Federal Communication Commission's (FCC) Public Notice of Inquiry issued on December 1, 2009 seeking comments on the Transition from a Circuit-Switched Network Public Switched Telephone Network (PSTN) to an Internet Protocol (IP) All-IP Network (*the PSTN/IP Notice*). The PSTN/IP Notice seeks comment on whether the FCC should consider issuing a Notice of Inquiry (NOI) and the relevant policy questions that an NOI on this topic should consider. The FCC set a deadline of December 21, 2009 for filing Comments.

The PaPUC Comments should not be construed as binding on the PaPUC in any proceeding before the PaPUC. These Comments could change in response to subsequent events, including a review of other filed Comments and legal or regulatory developments at the federal or state level.

These Comments incorporate and reflect the PaPUC's Comment on the National Broadband Plan filed on September 8, 2009 in NBP Notice #1. These Comments also reflect and incorporate the PaPUC's filed Comments and Replies in the *Intercarrier Compensation* proceeding at Docket No. 01-92, the *Universal Service* proceeding at Docket No. 96-45, and the *Separations* proceeding at Docket No. 80-286.

The *PSTN/IP Notice* seeks input on three questions. First, the FCC wants to know what policies and regulatory structures may facilitate, and which may hinder, migration to an all IP network. Second, the FCC asks what aspects of traditional policy frameworks are important to consider and address, including access by persons with disabilities. Finally, the FCC asks about the role of carrier of last resort (COLR).

*Regulatory Consistency.* The FCC should solicit comments on a consistent regulatory classification for the physical facilities used to operate an IP network. The Telecommunications Act of 1996 (TA-96) divides services into "telecommunications" or "information service" with different regulatory results. Telecommunications facilities and services are jointly regulated by the states and the FCC whereas the FCC loosely regulates Information Services. The FCC inconsistently classifies some network facilities and services as "information service" but other networks or services are classified as "telecommunications" with shared jurisdiction. It is intuitively understood, and the FCC has already acknowledged, that broadband network facilities are *jointly* used for the provision of telecommunications and information services. For example, fiber optic broadband facilities are jointly used for the *transmission* of legacy PSTN voice

traffic, the transmission of IP-based VoIP calls, the interconnection function between telecommunications common carriers and information service providers, etc. To arbitrarily label broadband network facilities as “information services” defeats on paper this network engineering reality and creates unwarranted regulatory implications both at the federal and state regulatory jurisdictions in major issue areas such as non-discriminatory interconnection and intercarrier compensation.

The FCC should propose classifying facilities in an IP network to be “telecommunications” regardless of the nature of the IP service provided over those physical facilities. This approach is consistent with the *Time-Warner*<sup>1</sup> decision, retains the traditional “common carrier” authority needed to ensure interconnection, and provides a revenue base to support universal service above and beyond the additional costs for any broadband deployment program. This also relieves regulatory uncertainty about access to the physical facilities that IP service providers will need to deliver IP-based services.

The “efficient migration to an all IP world” will not be achieved without a renewed focus on the application of well tried and true common carrier principles for broadband facilities and services. These principles and protections are equally applicable for the interconnectivity and wholesale access between common carriers and information service providers, as well as for the competitive and non-discriminatory retail access choice of end-user consumers to various information content providers at a reasonable price.

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<sup>1</sup> *In re: Time Warner Petition*, Docket No. 06-55 (March 1, 2007); *In the matter of Fiber Technologies Networks, L.L.C.*, File No. EB-05-MD-014 (February 23, 2007).

*Preconditions to Federal Support.* The PaPUC also suggests that the FCC seek comment on what preconditions must be required of areas or carriers that seek federal support for universal service or broadband deployment.

Pennsylvania has significant experience on that issue. The American Internet Industry Association has concluded that Pennsylvania has the most aggressive rural broadband deployment program in the nation.<sup>2</sup> Universal service and broadband deployment are possible in rural and urban areas. Pennsylvania is an urban and rural state that is completing a broadband availability program in a Commonwealth with the nation's 3<sup>rd</sup> largest rural resident population and the 3<sup>rd</sup> largest elderly population.<sup>3</sup>

Every Pennsylvania rural carrier, except two, has been providing broadband availability as of December 31, 2008. The other two, Windstream and Embarq (now CenturyLink), will provide broadband availability by December 31, 2013. The non-rural Verizon Pennsylvania and Verizon North incumbent local exchange carrier (ILEC) telephone companies will complete their broadband deployment commitments throughout their service territories – including many rural exchanges – no later than 2015. Pennsylvania is a net contributor to the federal Universal Service Fund and contributes \$165M annually to those efforts.<sup>4</sup>

Pennsylvania achieved broadband availability through local rate increases and intrastate access rate reform. Those efforts were part of a legislative initiative to provide carriers with the additional resources needed to finance broadband facilities and services

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<sup>2</sup> United States Internet Industry Association, *Deployment of Broadband to Rural America: An Evaluation of Current Broadband Services To Rural Americans and The Impact of Internet Public Policy On Broadband Deployment* (March 2008), pp. 4-5, 13.

<sup>3</sup> U.S. Bureau of the Census. Census 2000, Table P2. Rural and Urban Population by State [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en); U.S. Bureau of the Census, Population Estimates, Population Division, 2008 Population Estimates by state <http://www.census.gov/popest/estbygeo.html>.

<sup>4</sup> *Universal Service Monitoring Report, Docket No. 98-202 (2008), Table 1.12, p. 1-37.*

throughout the Commonwealth, most particularly in rural areas.<sup>5</sup> Pennsylvania also created a state universal service fund that assists in the maintenance of affordable local exchange telephone service rates for many end-users of rural ILECs.

For example, as of 2006, Pennsylvania expended in excess of \$1.014 billion dollars from 1997 through 2005 to support access and local rate reforms to advance broadband deployment. This consists of \$605.9 million on Verizon's access rate reductions, \$189.4 million on rural carrier access rate reductions, and \$218.3 million from a Pennsylvania Universal Service Fund PaUSF to support reform.<sup>6</sup>

Since then, the PaPUC promoted broadband availability in rural and urban Pennsylvania by approving filings to increase local calling rates to fund broadband availability under state law set out at 66 Pa.C.S. § 3011 se seq. (Chapter 30).

Areas or carriers that have not undertaken reforms like Pennsylvania should be required to do so as a precondition to getting federal support. This will reduce costs and ensure a fair allocation of the costs to preserve universal service and promote broadband in all areas of the nation -- including areas that are close to completing broadband availability while paying to support federal universal service.

*Support for State Policies.* The FCC should also solicit comments on how the FCC can reconcile national efforts with successful state programs. Pennsylvania is a jurisdiction that is attaining broadband availability without unreasonably burdening IP networks or services. New legislation codified at 73 Pa.C.S. § 2251 limits IP and VoIP

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<sup>5</sup> The PaPUC is statutorily mandated to manage the interrelationship of intrastate carrier access rates and other non-competitive service rates of regulated ILECs in a "revenue neutral" manner. 66 Pa. C.S. § 3017(a).

<sup>6</sup> *In re: Intercarrier Compensation*, Docket No. 92-01, PaPUC Comments, October 25, 2006, pp. 4-5.

retail services regulation while maintaining the authority of the PaPUC over such matters as access charges or intercarrier compensation, the support for universal service, telecommunications relay service (TRS), 911 services, and various protected services. No FCC action should undermine state law or efforts.

*Minimizing Burdens on Net Contributor States.* The FCC should solicit comments on how broadband costs can be underwritten without unduly burdening net contributor states like Pennsylvania.

The PaPUC notes that recent Verizon Ex Parte filings support a uniform default intercarrier compensation rate as part of a broadband deployment program without addressing how net contributor states, like Pennsylvania, with revenue neutral recovery mandates for access rate reductions can do so without increasing local rates or further burdening their consumers with larger contributions to federal universal service efforts.<sup>7</sup> The PaPUC also notes that CenturyTel's recent Ex Parte supports a national broadband plan without addressing the cost to consumers in net contributor states that have already implemented local rate increases to support broadband deployment.<sup>8</sup> The PaPUC also suggests that comments should address whether it is lawful and in the public interest to design a national broadband plan that does not take into account the net contributor status of states like Pennsylvania and state laws that require reductions to access charge rates and revenues to be replaced by increases to local service rates.

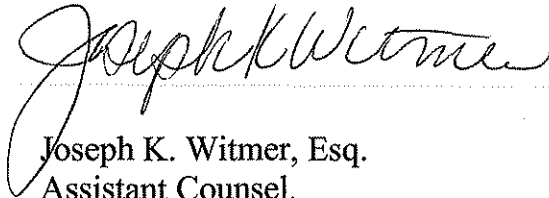
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<sup>7</sup> *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *IP Enabled Services*, WC Docket No. 04-36; *National Broadband Plan*, GN Docket No. 09-51; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *High Cost Universal Service Support*, Docket No. 05-337, Verizon Ex Parte (December 11, 2009), pp. 1-2.

<sup>8</sup> *In Re: High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, CenturyLink Ex Parte (December 11, 2009).

The PaPUC thanks the FCC for providing states with an opportunity to participate in this important proceeding.

Respectfully submitted,  
Pennsylvania Public Utility Commission

A handwritten signature in cursive script, reading "Joseph K. Witmer".

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